

Proposed Revisions to the CEQA Guidelines Revised Text in Response to Public Comments

May 15, 1998

Revisions proposed in the October 10, 1997 text are marked as follows:
additions are underlined; deletions are indicated by ~~strikeout~~.

Text revisions in response to public comment are marked as follows: new
additions are **bolded and underlined** and deletions are indicated by ~~**bolded strikeout**~~.

SECTIONS AFFECTED

- 15004 - Time of Preparation
- 15041 - Authority to Mitigate
- 15060 - Preliminary Review
- 15061 - Review for Exemption
- 15063 - Initial Study
- 15064 - Determining the Significance of the Environmental Effects Caused by a Project
- 15064.5 - Determining the Significance of Impacts on Historical and Unique Archeological Resources [new section]
- 15064.7 - Thresholds of Significance [new section]
- 15073.5 - Recirculation of a Negative Declaration Prior to Adoption [new section]
- 15086 - Consultation Concerning Draft EIR
- 15088.5 - Recirculation of an EIR Prior to Certification
- 15097 - Mitigation Monitoring or Reporting [new section]
- 15111 - Projects with Short Time Periods for Approval
- 15125 - Environmental Setting
- 15126.2 - Consideration and Discussion of Significant Environmental Impacts [new section]
- 15126.4 - Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects [new section]
- 15126.6 - Consideration and Discussion of Alternatives to the Proposed Project [new section]
- 15130 - Discussion of Cumulative Impacts
- 15152 - Tiering
- 15183 - Projects Consistent with a Community Plan, General Plan or Zoning
- 15204 - Focus of Review
- 15269 - Emergency Projects
- 15283 - Housing Needs Allocation [new section]
- 15304 - Minor Alterations to Land
- 15325 - Transfers of Ownership in Land to Preserve ~~Open Space~~ Existing

- 15331 - Natural Conditions
Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the
Release or Threat of Release of Hazardous Waste or Hazardous
Substances. [new section]
- 15333 - In-Fill Development Projects [new section]
- Appendix G ~~Significant Effect~~ Environmental Checklist
Appendix K ~~J~~ ~~Archaeological Impacts~~ Guide to Tiering

The Following Sections are Withdrawn from the Proposal

- 15307 - Actions by Regulatory Agencies for Protection of Natural Resources
15231 - Adequacy of EIR or Negative Declaration for Use by Lead and
Responsible Agencies

No Revisions are Made to the Following Sections - They remain as proposed on
October 3, 1998

- 15003 - Policies
15045 - Fees
15062. Notice of Exemption (*non-substantive*)
15065 - Mandatory Findings of Significance (*non-substantive*)
15075 - Notice of Determination on a Project for which a Proposed Negative or
Mitigated Negative Declaration has been Approved
15085 - Notice of Completion
15091 - Findings
15093 - Statement of Overriding Considerations (*non-substantive*)
15107 - Completion of Negative Declaration for Certain Private Projects
15120 - General
15124 - Project Description
15126 - Consideration and Discussion of Environmental Impacts
15162 - Subsequent EIRs and Negative Declarations
15164 - Addendum to an EIR or Negative Declaration
15186 - School Facilities [new section] (*non-substantive*)
15201 - Public Participation
15202 - Public Hearings
15205 - Review by State Agencies (*non-substantive*)
15206 - Projects of Statewide, Regional, or Areawide Significance
15276 - ~~State and Regional~~ Transportation Improvement and Congestion
Management Programs (*non-substantive*)
15284 - Pipelines [new section]
15285 - Transit Agency Responses to Revenue Shortfalls [new section]

15300.2 - Exceptions
15301 - Existing facilities
15303 - New Construction or Conversion of Small Structures
15316 - Transfer of Ownership of Land in Order to Create Parks
15332 - Historical Resource Restoration/Rehabilitation [new section]
15378. Project

~~Appendix I~~ ~~Environmental Checklist~~ [delete entire appendix]
Appendix J I Notice of Preparation [no change to text]

15004. Time of Preparation.

(a) [no change]

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) With private projects, the lead agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

(3) To implement the above principles, public agencies ~~shall~~ ~~should~~ not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies should not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the final consummation of the purchase and the agency's ~~it~~ future use of the site on CEQA compliance.

(B) Commit or solicit funding for a specific project where the agency binds itself to use the funding to implement that project.

(C) Otherwise take any action which gives ~~substantial~~ impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of ~~subsequent~~ CEQA review of that public project.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the regular

project report if such a report is used in its existing review and budgetary process.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21003, 21061 and 21105, Public Resources Code; *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal.3d 247; *Mount Sutro Defense Committee v. Regents of the University of California*, (1978) 77 Cal.App.3d 20.

15041. Authority to Mitigate.

Within the limitations described in Section 15040 ; :

(a) A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to **substantially** lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the “nexus” and “rough proportionality” standards established by case law (Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.).

(b) [no change]

(c) [no change]

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21002, 21002.1, and 21085, Public Resources Code; *Golden Gate Bridge District v. Muzzi* (1978) 83 Cal.App.3d 707; *Laurel Hills Homeowners Assn. v. City Council of City of Los Angeles* (1978) 83 Cal.App.3d 515.

15060. Preliminary Review.

(a) A ~~public lead~~ agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA. ~~Accepting an application as complete does not limit the authority of the lead agency to require~~

~~the applicant to submit additional information needed for environmental evaluation of the project.~~

(c) Once an application is deemed complete, a ~~public lead~~ agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency.;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.; **or**

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

Authority: Sections 21083 and 21087, Public Resources Code;

Reference: ~~Section 65944, Government Code;~~ Section **s 21080(b)**, 21080.2 **and 21160**, Public Resources Code.

15061. Review for Exemption.

(a) Once a lead agency has determined that an activity is a project subject to CEQA ~~As part of the preliminary review, a ~~public lead~~ agency shall determine whether a particular activity the project~~ is exempt from CEQA.

(b) A project is exempt from CEQA if ~~Possible exemptions from CEQA include :~~

(1) ~~The activity is not a project as defined in Section 15378. The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).~~

(2) The project ~~is exempt pursuant to a has been granted an exemption by statute (see Article 18, commencing with Section 15260) or by categorical exemption (see Article 19, commencing with Section 15300) and is not excepted from that exemption by the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.~~

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(c) [no change]

(d) [no change]

Authority: Sections 21083 and 21087, Public Resources Code

Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.

15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an ~~initial study~~ environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion **supported by facts**, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to ~~amount to a include the~~ level of detail included in an EIR.

(b) [no change]

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(c) Purposes. The purposes of an initial study are to:

(1) - (7) [no change]

~~(8) Determine whether the incremental effects of an individual project are cumulatively considerable when viewed against the backdrop of past, present, and reasonably anticipated future projects. The evaluation of the possible significance~~

~~of a cumulative effect undertaken in an initial study is not intended to be as detailed as the analysis of significant cumulative effects contained in an EIR.~~

(d) [no change]

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) - (f) [no change]

(g) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) - (6) [no change]

(7) The provisions of Sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted. (e.g. a tentative subdivision, ~~or~~ conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to Sections 15162 and 15163.

(h) [no change]

(i) [no change]

(j) (1) When assessing whether a ~~significant~~ cumulative effect requires an EIR, the lead agency shall consider whether **the cumulative impact is significant and whether** the effects of the project are cumulatively considerable. **An EIR must be prepared if the cumulative impact is significant and the project's incremental effect, though individually limited, is cumulatively considerable.** "Cumulatively considerable " means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of ~~probable reasonably anticipated~~ future projects. ~~as defined in Section 15130.~~ **"Probable future projects" are defined in Section 15130.**

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be avoided or substantially

lessened and thus is not potentially significant. When a project might contribute to a significant cumulative impact, but the contribution will be lessened or avoided through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been lessened or avoided.

(23) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if ~~it complies the project will comply~~ with the requirements in a previously approved plan or mitigation program which ~~specifically addresses~~ provides the means to avoid or substantially lessen the cumulative problem (e.g. ~~watershed water quality control~~ plan, air quality plan, ~~integrated waste management plan~~) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by ~~the any~~ public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.

~~(34) CEQA is meant to be implemented in the most efficient and expeditious manner. Consistent with this policy, a~~ A lead agency may determine that the incremental impacts of a project are not cumulatively ~~significant because~~ considerable when they are so small that they make only a de minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project. ~~Such de minimis incremental impacts, by themselves, do not trigger the obligation to prepare an EIR. An EIR is not required in this case because it would serve little useful purpose; A de minimis contribution means that the~~ environmental conditions would essentially be the same whether or not the proposed project is ~~approved implemented~~.

(5) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112.

15064.5. **Determining the Significance of Impacts to Archeological and Historical Resources and Unique Archaeological Resources.** [new

section]

(a) For purposes of this section, the term “historic resources” shall include the following: ~~CEQA applies to effects on historical resources, defined as follows:~~

(1) ~~An historical~~ A resource ~~is a resource~~ listed in, or determined to be eligible for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4800 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) ~~(2) Historical resources may include, but are not limited to,~~ Any object, building, structure, site, area, place, record, or manuscript which ~~a lead agency determines to be~~ ~~is~~ historically ~~or archaeologically~~ significant or ~~is~~ significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California ~~may be considered to be an historic resource, provided the lead agency’s determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be ‘historically significant’ if the resource meets the~~

~~(3) The California Register of Historical Resources is an authoritative guide in California to be used by state and local agencies, private groups and citizens to identify the state’s historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change.~~

~~(4) C~~ criteria for listing on the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4800.3) ~~should be consulted in determining if an historical resource may be eligible for listing, as follows:~~

1. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

2. Is associated with the lives of persons important in our past;

3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

4. Has yielded, or may be likely to yield, information important in prehistory or history.

~~(5) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to Section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in Section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining whether that the resource may be is an historical resource as defined in Public Resources Code Sections 5020.1(j) and 5024.1.~~

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration in the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) ~~(B) Alters or~~ Demolishes or materially alters in an adverse manner those physical characteristics that account for a determination by a lead agency, based upon substantial evidence in light of the whole record, that the resource is an historical resource for purposes of CEQA.

(3) **Generally, a A** project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's

Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify **any** potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that ~~the any adopted~~ measures to mitigate or avoid significant adverse change are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, which is defined as any site which: ~~(A) I~~ is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California; ~~and~~ .

~~(B) Meets any of the following criteria:~~

~~1. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;~~

~~2. Is associated with the lives of persons important in our past;~~

~~3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or~~

~~4. Has yielded, or may be likely to yield, information important in prehistory or history.~~

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, ~~and~~ this section, and Section 15126.34 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria outlined above, but does

meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of that section. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of **Native American** human remains within the project, a lead agency shall work with the most likely descendant (MLD), as designated by the Native American Heritage Commission, and the applicant to develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any associated grave goods. Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered has been informed and has determined that no investigation of the cause of death is required, and

(B) If remains are of Native American origin,

1. The MLD has made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

2. The Native American Heritage Commission was unable to identify a MLD or the MLD failed to make a recommendation within 24 hours after being notified by the commission.

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a descendant;

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find **by a qualified archaeologist**. If the find is determined to be an important historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Construction work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21083.2, 21084, and 21084.1, Public Resources Code; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

15064.7. Thresholds of Significance. [new section]

(a) Each public agency is encouraged to develop and **publish** ~~adopt~~ thresholds of significance ~~to aid that the agency uses~~ in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will **normally be determined** ~~be presumed~~ to be significant by the agency and compliance with which means the effect ~~will~~ **normally will be determined** ~~be presumed~~ to be **less than** significant.

~~(b) In order to be regarded as a standard or a rebuttable presumption of an impact's significance, thresholds of significance should~~ **must** be developed through a public review process **with advance public notice. The adoption of thresholds must be made through adoption in an agency's ordinances, codes or regulations or available in a published document** and be supported by substantial evidence.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21082 and 21083, Public Resources Code.

15073.5. Recirculation of a Negative Declaration Prior to Adoption. [new section]

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA , **which do not create new significant environmental effects** and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process ~~the lead agency determines, on the basis of there is~~ substantial evidence in light of the whole record, that the project, as revised, may have a significant ~~environmental~~ effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

.... If during the negative declaration process ~~the lead agency determines on the basis of~~ there is substantial evidence in light of the whole record, that the project, as revised, may have a significant ~~environmental~~ effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR...

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Section 21080, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project,

(3) Any other ~~Other~~ state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project.

(4) ~~For a project of statewide, regional, or areawide significance, a~~ Any city or county which borders ~~on a the~~ city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation

facilities within their jurisdictions which could be affected by the project.

"Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.

(6) For a state lead agency, the Department of Fish and Game as to the impact of the project on the continued existence of any endangered, ~~rare~~ or threatened species pursuant to Article 4 (commencing with Section 2090) of Chapter 1.5 of Division 3 of the Fish and Game Code.

(7) For a state lead agency when the EIR is being prepared for a highway or freeway project, the State Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non-attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

(8) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

(b) The lead agency may consult directly with ~~any~~ :

(1) Any person who has special expertise with respect to any environmental impact involved,

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project which are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

(d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency ~~or the lead agency~~ considers to be significant environmental effects **shall advise the lead agency of those effects. and has so advised the lead agency. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency** shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures.

If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21081.6, 21092.4, 21092.5, 21104 and 21153, Public Resources Code.

15088.5. Recirculation of an EIR Prior to Certification.

(a) - (e) [no change]

(f) The lead agency shall evaluate and respond to comments as provided in Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. Following are two ways in which the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.

(1) When the EIR is substantially revised and the entire EIR is recirculated, the lead agency may require that reviewers submit new comments and need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either within the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR. The lead agency shall send ~~notice of the recirculation~~ directly to every agency, person, or organization that commented on the prior draft EIR **a notice of the recirculation specifying that new comments must be submitted.**

(2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions. The lead agency **need only shall** respond to ~~the~~ **(i) comments received during both the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) the comments received during the ~~and~~ recirculation periods that relate to the chapters or portions of the earlier EIR that were not revised and recirculated.** The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

(g) When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

15097. Mitigation Monitoring or Reporting. [new section]

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, **until mitigation measures have been completed** the lead agency remains responsible ~~for the adequacy of the program, compliance with the program, and~~ for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan-level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan-level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon ~~its~~ completion **of the mitigation measure**. "Monitoring" is generally an ongoing process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of ~~the project's level of~~ compliance with mitigation requirements.
Reporting alone will suffice for simple projects.

(d) Lead and responsible agencies should coordinate their mitigation monitoring programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of

mitigation measures and using those results to improve future mitigation measures.

(f) Where ~~a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes~~ mitigation measures ~~or and~~ project revisions ~~have been required or incorporated for incorporation~~ into a project ~~at the request of a trustee agency~~, that agency, ~~at the same time~~, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. ~~prior to the close of the public review period~~. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located. Each transportation planning agency shall adopt guidelines for the submittal of such information.

Authority: Sections 21083 and 21087, Public Resources Code.

References: Sections 21081.6 and ~~21080.7~~ 21081.7, Public Resources Code.

15111. Projects with Short Time Periods for Approval.

(a) [no change]

(b) Examples of time periods subject to this section include, but are not limited to:

~~(1) Action within 50 days on a tentative subdivision map for which an EIR is being or will be prepared pursuant to Article 2 (commencing with Section 66452) of Chapter 3, Division 2, Title 2 of the Government Code, but a negative declaration for a subdivision map must be completed within the 50 day period (see Government Code Section 66452.1(c)).~~

~~(2)~~ (2) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

~~(3)~~ (2) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

~~(4)~~ (3) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 and 3724 of the Public Resources Code.

(c) In any case described in this section, the **environmental document shall be completed or certified and the** decision on the **project application** shall be made within ~~one year from the date on which an application requesting approval of such project has been received and accepted as complete for CEQA processing by such agency~~ the period established under the Permit Streamlining Act (Government Code Sections 65920, et seq.). ~~This one-year limit may be extended once for a period not to exceed 90 days upon consent of the public agency and the applicant.~~

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C. v. Arcata National Corp.* (1976) 59 Cal.App.3d 959 (1976).

15125. Environmental Setting.

~~(a) The environmental setting is the baseline physical conditions by which a lead agency determines whether an impact is significant.~~ An EIR must include a description of the physical environmental conditions in the vicinity of the project, as ~~it exists~~ they exist before the commencement of the project at the time the **notice of preparation is published.** ~~application is submitted, or where no application is required, at the time environmental analysis is commenced,~~ from both a local and regional perspective. **This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.** ~~When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle that the existing environmental setting should normally serve as the baseline conditions for determining significant impacts in Section 15229.~~ The description **of the environmental setting** shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

~~(a c)~~ Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

~~(b d)~~ The EIR shall discuss any inconsistencies between the proposed project

and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment plan ~~Air Quality Management Plan (or State Implementation Plan once adopted)~~, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(~~c~~ e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published ~~application is submitted, or where no application is required, at the time environmental analysis is commenced~~, as well as the potential future conditions discussed in the plan.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C. v. County of El Dorado* (1982) 131 Cal.App.3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307 .

15126.2 **Consideration and Discussion of Significant Environmental Impacts.** [new section]

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should limit its examination ~~of any potential impact to~~ to changes in the existing physical conditions in the affected area as ~~it they exists~~ at the time the notice of preparation is published ~~application is submitted, or where no application is required, at the time environmental analysis is commenced~~. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. ~~Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.~~

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse there after unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may ~~further~~ tax existing community service facilities, **requiring construction of new facilities that could cause significant environmental effects so consideration must be given to this impact.** Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21002, 21100, 21081.6, and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; ***Goleta Union School Dist. v. Regents of the Univ. Of Calif. (1995) 37 Cal. App.4th 1025.***

15126.4 **Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.** [new section]

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, **responsible or trustee** agency which are not included but **the lead agency determines** could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale*, 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with **all** applicable constitutional requirements, including the following: ~~such as the "nexus" and "rough proportionality" standards established by case law (Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374).~~ ~~If a measure cannot be legally imposed, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination but need~~

~~not propose or analyze that measure.~~

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be “roughly proportional” to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency’s determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, the project’s impact on the historical resource will **generally** be considered mitigated below a level of significance and thus is not significant.

~~(2) In some circumstances~~ Generally, documentation the effects of demolition of an historical resource, by way of historic narrative, photographs of architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects are not mitigated to a point where clearly no significant effect on the environment would occur. ~~when documentation of an historical building is prepared by way of historic narrative, photographs, or architectural drawings.~~

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

- (i) Planning construction to avoid archaeological sites;
- (ii) Incorporation of sites within parks, greenspace, or other open space;
- (iii) Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
- (iv) Deeding the site into a permanent conservation easement.

~~**(C) The lead agency may require a mitigation plan to be carried out as a condition of approval of the project.**~~

~~**(D)**~~**(C)** When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

~~**(E)**~~**(D)** Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21002, 21100, 21081.6, and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.

15126.6 **Consideration and Discussion of Alternatives to the Proposed Project.** [new section]

- (a) Alternatives to the Proposed Project. An EIR shall describe a range of

reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives ~~to that will~~ foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376)

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic ~~purposes objectives~~ of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that ~~can may~~ be used to eliminate alternatives from **detailed consideration in an EIR** are: (i) failure to meet **most of the basic** project objectives, (ii) infeasibility, **or** (iii) inability to avoid significant environmental impacts ~~or the creation of new significant environmental impacts.~~

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effect of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles*, 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis ~~shall not function as a~~ **is not the** baseline for determining whether the proposed project's environmental impacts may be significant; **unless it is identical to the existing environmental setting analysis which does establish** that baseline ~~is established by the environmental setting~~ (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the **notice of preparation is published** ~~application is submitted, or where no application is required, at the time environmental analysis is commenced~~, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is ~~that the~~ **circumstance under which** the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

~~(e)~~(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. ~~Of~~ those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(A) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (Citizens of Goleta Valley v. Board of Supervisors, (1990) 52 Cal.3d 553; see Save Our Residential Environment v. City of West Hollywood, (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(B) Alternative locations.

1. Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

2. None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be close proximity to natural resources at a given location.

3. Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous

document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553, 573).

(C) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. *Residents Ad Hoc Statium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21002, 21100, 21081.6, and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

15130. Discussion of Cumulative Impacts.

(a) An EIR shall discuss cumulative ~~Cumulative~~ impacts of a project ~~shall be discussed when they are significant~~ **the project's incremental effect is cumulatively considerable, as defined in section 15065(c), and the cumulative impact is significant.** Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable", a lead agency need not consider that effect significant, **but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.**

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When ~~a the combined~~ cumulative impact ~~exists associated with the project's incremental effect and the effects of other projects but~~ is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. ~~If reasonably available, a~~ **A** lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be mitigated to a level of less than significant and thus is not significant, **A project's contribution is less than significant if the project is required to implement or fund its fair share of a mitigation measure or measures**

~~designed to alleviate the cumulative impact.t. When a project might contribute to a significant cumulative impact, but that contribution will be lessened or avoided through mitigation measures or alternatives in the EIR, the EIR shall briefly indicate how the contribution has been lessened or avoided and need not discuss the cumulative impact in further detail.~~ The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be lessened or avoided.

(4) An EIR may determine that a project's contribution to a significant cumulative impact is de minimus and thus is not significant. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided ~~of~~ for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and ~~reasonably anticipated~~ **probable** future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated ~~is designed to evaluate~~ regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

1. When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

2. "~~Reasonably anticipated~~ Probable future projects" are ~~limited to~~ those projects requiring an agency approval for an application which has been received at

the time the ~~EIR notice of preparation~~ is released ~~for public review and comment pursuant to Section 15087~~, unless abandoned by the applicant, those public agency projects for which money has been budgeted or **projects** included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan **or included in summary of projections of projects (or development areas designated) in general plans or similar plan**, and those projects anticipated as later phase of a previously approved project (e.g. a subdivision).

3. Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available; and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects of a proposed project .

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of ~~that the proposed~~ project have already been adequately ~~evaluated~~ addressed, as defined in section 15152(e), in a certified EIR for that plan.

(e) If a cumulative impact was adequately ~~discussed~~ addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section 15183(j).

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21083(b), 21093, 21094, and 21100, Public Resources Code; *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel*

Heights Homeowners Association v. Regents of the University of California (1988) 47 Cal.3d 376; Sierra Club v. Gilroy (1990) 220 Cal.App.3d 30; Citizens to Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421; Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist. (1994) 24 Cal.App.4th 826; Las Virgenes Homeowners Fed'n v. County of Los Angeles (1986) 177 Cal.App.3d 300; San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus (1994) 27 Cal. App.4th 713; and Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services (1995) 38 Cal.App.4th 1574.

15152. Tiering.

"Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(a) Agencies are encouraged to tier the ~~EIRs~~ environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(b) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(c) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

~~(c)~~ (d) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

~~(d)~~ (e) ~~The An initial study shall be used prepared to decide whether and to what extent the prior EIR is still sufficient for the present project, unless a lead agency determines that an EIR will clearly be required.~~ A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not examined in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

~~(e)~~ ~~(f)~~ (1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and ~~probable reasonably anticipated~~ future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are **cumulatively** considerable. **For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(j).** ~~“Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of reasonably anticipated future projects as defined in Section 15130. A project’s incremental contribution to a cumulative effect is not cumulatively considerable if it complies with requirements in a plan adopted to deal with the cumulative problem (e.g. watershed plan, air quality plan) in the geographic area where the project is located.~~

(3) Significant environmental effects have been “adequately addressed” if the lead agency determines that:

(i) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report;

(ii) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project; or

(iii) they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects.

(f) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that ~~the EIR~~ it is being tiered with the earlier EIR.

(g) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple-family residential development / residential and commercial or retail mixed-use development (Section 21158.5, Public Resources Code).

(6) Redevelopment project (Section 15180).

(7) Housing / neighborhood commercial facilities in an urbanized area (Section 15181).

(8) Projects consistent with community plan, general plan, or zoning (Section 15183).

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21003, 21061, **21093, 21094**, 21100, and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma*

(1992) 6 Cal.App. 4th 1307.

15183. ~~Residential~~ Projects Consistent with a Community Plan, General Plan or Zoning.

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary ~~to examine consider where there are~~ project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a ~~residential~~ project meeting the requirements of this section, a public agency shall limit its examination of environmental effects ~~under CEQA to effects to those~~ which the agency determines, in an initial study **or other analysis**:

(1) Are peculiar to the project or the parcel on which the project would be located, ~~although the effect may occur on or off the site of the project, and~~

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the ~~residential~~ project is consistent,

(3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

~~(b)~~ (d) This section shall apply only to ~~residential~~ projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan, ~~or~~

~~(B)~~ (B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of ~~residential~~ development, or

~~(B)~~ (C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

~~(c)~~ (e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

~~(d)~~ (f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, **unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.** The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decisionmaking body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

- (1) Parking ordinances.
- (2) Public access requirements.
- (3) Grading ordinances.
- (4) Hillside development ordinances.
- (5) Flood plain ordinances.
- (6) Habitat protection or conservation ordinances.
- (7) View protection ordinances.

~~(e)~~ (h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

~~(f)~~ (i) Where ~~a~~ the prior EIR relied upon by the lead agency was prepared for a general plan or community plan meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a ~~residential~~ project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(i) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

Authority: Sections 21083 and 21087, Public Resources Code.
Reference: Section 21083.3, Public Resources.

15204. Focus of Review.

(a) In reviewing draft EIRs, ~~people~~ persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, ~~commentors~~ **reviewers** should be aware that the adequacy of an EIR is ~~assessed~~ **determined** in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. **CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.**

(b) In reviewing negative declarations, ~~people~~ persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If ~~people~~ persons and public agencies believe that the project ~~would~~ **may** have a significant effect, they should:

- (1) Identify the specific effect,
- (2) Explain why they believe the effect would occur, and
- (3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and ~~whenever possible,~~ **should** submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of their comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility.

(e) This section shall not be used to restrict the ability of reviewers to comment ~~on broader issues and~~ on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

(f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections 21080, 21081.6, and 21080.4, 21104 and 21153, Public Resources Code; San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1996) 42 Cal.App.4th 608; and Leonoff v. Monterey County Board of Supervisors (1990) 222 Cal.App.3d 1337 .

15269. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to ~~public~~ **publicly or privately owned** service facilities necessary to maintain service **essential to the public health, safety or welfare.**

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm,

earthquake, land subsidence, gradual earth movement, or land or mud slide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways , **nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.**

(e) Seismic work on highways and bridges ~~as described on~~ pursuant to Section 180.2 of the Streets and Highways Code, **Section 180 et seq.**

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Sections ~~5028~~, 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

15283. Housing Needs Allocation. [new section]

CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, ~~or a council of governments, or a city or county pursuant to Section 65584 of the Government Code. or an appeal of a regional housing needs determination on the part of a city or county as provided under the allocation process.~~

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Section 65584, Government Code.

15304. Minor Alterations to Land.

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard **such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.**

(b) New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping.

(c) - (h) [no change]

(i) Fuel management activities within ~~150~~ 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Section 21084, Public Resources Code.

15325. Transfers of Ownership in Land to Preserve ~~Open Space~~ Existing Natural Conditions and Historical Resources

Class 25 consists of transfers of ownership in interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:

(a) Acquisition, sale, or other transfer of areas to preserve existing natural conditions, including plant or animal habitats.

(b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.

(c) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats.

(d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.

(e) Acquisition, sale, or other transfer to preserve historical resources.

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Section 21084, Public Resources Code.

15331. Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances. [new section]

Class 31 consists of any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions **costing \$1 million or less.** No cleanup action shall be subject to this Class 31 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit, **with the exception of low temperature thermal desorption**, or the relocation of residences or businesses, **or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District.** All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, air quality **rules** such as **those governing** volatile organic compounds and water quality **standards**, and approved by the regulatory body with jurisdiction over the site. Examples of such minor cleanup actions include but are not limited to:

(a) Removal of sealed, non-leaking drums or barrels of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;

(b) Maintenance or stabilization of berms, dikes, or surface impoundments;

(c) Construction or maintenance of interim or temporary surface caps;

(d) Onsite treatment of contaminated soils or sludges provided treatment system meets Title 22 requirements and local air district requirements;

(e) Excavation and/or offsite disposal of contaminated soils or sludges;

(f) Application of dust suppressants or dust binders to surface soils;

(g) Controls for surface water run-on and run-off **that meets seismic safety standards**;

(h) Pumping of leaking ponds **into an enclosed container**;

(i) Construction of interim or emergency ground water treatment systems;

(j) Small scale insitu soil vapor extraction and treatment systems;

(k) Posting of warning signs and fencing for a hazardous waste or

substance site that meets legal requirements for protection of wildlife.

~~(k) Immediate response actions to contain or eliminate an imminent, substantial, or interim endangerment as defined in applicable provisions of the Health and Safety Code or Water Code.~~

~~(l) Implementation of interim remedial measures to contain, stabilize or study hazardous waste or substance releases pursuant to Chapters 6.5, 6.8, 6.85 and possibly 6.65. of Division 20 of the Health and Safety Code.~~

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Section 21084, Public Resources Code.

15333. In-Fill Development Projects. [new section]

Class 33 consists of projects characterized as in-fill development meeting the conditions described in this section.

(a) The project is consistent with **the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.**

~~(b) No general plan amendment is required.~~

~~(c)(b) The proposed development occurs within city limits on a project site substantially surrounded by urban uses. in an urbanized area as defined by this chapter.~~

(c) The project site has no value, or only de minimus value, as habitat for endangered, rare or threatened species.

(d) There are no Approval of the project would not result in any significant effects relating to traffic, noise, or air quality, or water quality impacts.

(e) The site can be adequately served by all required utilities and public services.

Authority: Section 21083, Public Resources Code.

Reference: Section 21084, Public Resources Code.

